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September 28, 2015

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RECEIVED  
FEDERAL ELECTION  
COMMISSION

Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20436

Re: MUR 6954; James S. Gilmore III, Gilmore for America LLC, and Karen Marcus, Treasurer

Dear Mr. Jordan:

I serve as counsel to Governor James S. Gilmore III ("Gilmore"), Gilmore for America LLC ("Gilmore for America"), and Karen Marcus in her official capacity as Treasurer of Gilmore for America (collectively, "Respondents"). I write in response to the Federal Election Commission's ("Commission") letter, dated August 14, 2015, regarding a complaint from a group known as the American Democracy Legal Fund ("Complainant"), which was enclosed with that correspondence. Gilmore is a candidate for President of the United States, of which he notified the Commission on July 29, 2015, and Gilmore for America is the authorized candidate committee for his presidential campaign, registered with the Commission effective July 28, 2015, through a Statement of Organization filed with the Commission on August 4, 2015.

The complaint filed by American Democracy Legal Fund alleges that Gilmore became a candidate for President no later than July 7, 2015, thereby causing his Statement of Candidacy filing with the Commission on July 29, 2015 to have been filed at least seven days later than the expiration of the 15-day deadline on July 22, 2015. Complainant relies heavily on press reports as to Gilmore's own decision-making process to make these allegations, supplementing those reports with certain speculative statements apparently necessary to draw the conclusions forming the base of its complaint. The complaint does not allege that Gilmore, through his own words or the words of any of his authorized representatives, stated that he had decided to run for president. Nor does the complaint allege spending for testing-the-waters activity in excess of \$5,000 by July 7. Instead, Complainant infers, from a series of public appearances, to have known Gilmore's own mind and conclude that he missed a Commission filing by no more than a week.

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Gilmore, and his authorized presidential campaign committee, made all required filings with the Commission in a timely manner. Gilmore became a candidate for President on July 17, 2015 by making and then announcing that decision during a media appearance. Gilmore's Statement of Candidacy, filed on July 29, and his authorized committee registration with the Commission on August 4, 2015, were therefore filed well within time limits established by federal law.

Neither the complaint nor the press reports relied upon by Complainant present any affirmative statements or actions by Gilmore or his representatives to support the assertion that Gilmore had concluded in his own mind to run for president prior to July 17, 2015. After he determined to become a candidate for President of the United States, and announced that decision to the public, he provided proper notification to the Commission on July 29 as obligated under the Federal Election Campaign Act of 1971, as amended (the "Act").

As discussed below, the assertions in the complaint have no merit. Therefore, the Commission must dismiss the complaint finding no reason to believe Respondents violated the Act, as the complaint on its face lacks any substantive foundation for its allegations.

#### THE COMMISSION'S STANDARD FOR SUMMARY DISMISSAL

By law and the Commission's practices and procedures, the Commission has the power to investigate alleged violations of the Act only where there is "reason to believe" that a violation has been committed. 52 U.S.C. § 30109(a)(2). The Commission may find a "reason to believe" that a violation occurred only where a complaint states "sufficient specific facts, which, if proven true, would constitute a violation of the [Act]." Statement of Reasons, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee) at 1 (Dec. 21, 2000). Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. See 11 C.F.R. § 111.4(d)(2); MUR 4545 (ClintonGore '96 Primary Comm./Amtrak) ("While the available evidence is inadequate to determine whether the costs of the Train Trip were properly paid, the complainant's allegations are not sufficient to support a finding of reason to believe"); MUR 3534 (Bibleway Church of Atlas Road) ("[T]here was a lack of evidence indicating the literature was distributed on behalf of the [Respondent] or at its expense.").

Mere speculation is not accepted as true by the Commission, nor are unwarranted legal conclusions accepted as accurate or true. *Id.* See also MUR 4869 (American Postal Workers Union); Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas, MUR 4850 (Fossella) (Jul. 20, 2010). The Commission does not impose a heightened evidentiary threshold on a respondent confronted with general allegations of violations of the Act in order to obtain summary dismissal. Statement of Reasons, MUR 6277 (*In re Robert Kirkland*) (Jan. 28, 2011). Nevertheless, even if sufficient facts were alleged in the complaint, it should be summarily dismissed if the response refutes those allegations with "sufficiently compelling evidence." See Statement of Reasons, MUR 4960 at 2.

**FACTUAL BACKGROUND**

Throughout his career as a political and opinion leader, Gilmore has routinely made media appearances. During those media appearances, Gilmore routinely discusses policy issues facing the country.<sup>1</sup> During calendar year 2015, political commentators speculated on whether Gilmore would run for President of the United States, as he had done in 2008. However, neither Gilmore nor his representatives made any statements that were intended to suggest he had affirmatively decided to become a candidate for President of the United States until July 17, 2015. Once he had made that decision in his own mind, on July 17, 2015, he announced during a previously scheduled radio interview that he would be running for President, would be raising funds to do so, and would soon be launching a presidential website by early August.<sup>2</sup>

**LEGAL ANALYSIS****Gilmore did not become a candidate until July 17, 2015**

An individual is deemed to be a "candidate" for purposes of the Act for any federal office if he or she receives contributions or makes expenditures in excess of \$5,000, or if the individual has "given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions" or has made such expenditures in excess of \$5,000. 52 U.S.C. § 30101(2)(A), (B). Once an individual meets the \$5,000 threshold, the candidate has 15 days to designate a principal campaign committee by filing a Statement of Candidacy with the Commission. 52 U.S.C. § 30102(e)(1); 11 § C.F.R. 101.1(a). The principal campaign committee must file a Statement of Organization within 10 days of its designation, see 52 U.S.C. § 30103(a), and must file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a), (b).

Additionally, an individual can become a candidate for federal office by making expenditures (or accepting funds) for certain activities indicating that the individual has decided to run. 11 C.F.R. §§ 100.72(b); 100.131(b). Commission regulations set out a non-exhaustive list of activities that indicate that an individual has decided to become a candidate. Such indicia include (1) using general public political advertising to publicize his or her intention to campaign for Federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be spent after he or she becomes a candidate; (3) making or authorizing written or oral statements that refer to him or her as a candidate for a particular office; (4) conducting activities in close proximity to the election or over a protracted period of time; and (5) taking action to qualify for the ballot under state law. *Id.* These regulations seek to draw a distinction between

<sup>1</sup> See, e.g., At this Hour, CNN, Nov. 5, 2014, <https://www.youtube.com/watch?v=7beDSxzE-08>; Malzburg Show, NewsMax TV, Oct. 20, 2014, <https://www.youtube.com/watch?v=VYbKVdQFcx0>; Midpoint, NewsMax TV, Aug. 1, 2014, [https://www.youtube.com/watch?v=wuQS6\\_1JoHU](https://www.youtube.com/watch?v=wuQS6_1JoHU); RNC Exclusive: Jim Gilmore, Washington Times TV, Aug. 30, 2012, <https://www.youtube.com/watch?v=xlcN4ZQueZQ>.

<sup>2</sup> California Connection radio show; LA Talk Radio, Jul. 17, 2015, <http://www.latalkradio.com/California.php>.

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activities directed to an evaluation of the feasibility of one's candidacy and conduct or statements signifying that a decision to become a candidate has been made. See, e.g., Advisory Op. 1981-32 (Askew). As the Commission has consistently held, statements about a potential candidacy do not establish that Gilmore had decided to become a candidate.<sup>3</sup>

Gilmore's activities prior to July 17, 2015, certainly did not encompass any of these activities indicative of an individual's decision to become a candidate. Gilmore had not affirmatively decided to become a candidate, nor had he conducted any activities that were solely for the purpose of determining whether to become a candidate. Neither Gilmore's activities prior to July 17, 2015, nor the timing of his subsequent filings, demonstrate any violations of the Act. Namely, before that date, Gilmore did not make or authorize written or oral statements with intent to imply that he had entered into a candidacy for any federal office. Rather, Gilmore's statements, and those statements of his authorized representatives, consistently discussed only a potential candidacy, as well as how he might approach such a candidacy, rather than portraying a Gilmore candidacy as a certainty.

Prior to July 17, 2015, Gilmore consistently stated only that he was considering entering the race. For instance, in a July 9, 2015 television interview, Gilmore made it clear that he was not yet a candidate but would instead make a final announcement as to his plans at a later date.<sup>4</sup>

Complainant relies on a mix of declarations by unaffiliated press sources that Gilmore had fully decided to become a presidential candidate, along with mere speculation about the candidate's own decision-making process. For instance, Complainant cites a CNN caption during an interview with Gilmore on the "New Day" television program identifying him as a presidential candidate as proof that indeed Gilmore had himself decided to run. However, from Gilmore's own statements during the interview, rather than those of an unaffiliated third party, he described only why he would run for President, if indeed he were to enter the race. Gilmore certainly made no affirmative declaration of candidacy during that interview.<sup>5</sup>

While news stories published on July 7 and 8, 2015, in the *Richmond Times-Dispatch* and *Politico*, respectively, claimed that Gilmore had in fact decided to run for President, Gilmore did not decide to run for President nor did those news stories provide any quote from Gilmore demonstrating he had made

<sup>3</sup> See MUR 6462 (Trump, et al.) (Commission found no reason to believe that Trump became a candidate where Trump stated in a video clip that "the most important thing is I can't give up that possibility of running. I just feel like I owe it to myself, to my family, and perhaps most importantly the country," and in another clip stated "[s]o you'll have plenty of jobs if I decide to run and if I win."); MUR 6330 (Johnson) (Commission found no reason to believe that Johnson became a candidate where pages from his exploratory committee's website included the statements "as I consider a run," and "many have encouraged me to run for office" and a biographical packet entitled "Get to Know Bill Johnson" contained an introduction stating that Johnson was "humbled and honored that folks are encouraging him to run for office.").

<sup>4</sup> WTVR 6 Television Interview, Jim Gilmore, Jul. 9, 2015, <http://wtvr.com/2015/07/09/jim-gilmore-on-president-run/>.

<sup>5</sup> New Day, CNN TV, Jul. 16, 2015, <http://cnn.it/115mYMZ>.

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that decision. Instead, those news reports concluded what Gilmore himself had not yet concluded. During each of the interviews leading to these reports, Gilmore and his representatives intended only to discuss his potential plans, that he intended to decide by early August and would make an announcement about his final decision at that time.

Despite the assertions of Complainant—which relied heavily on these two press reports to not only establish a start date for the Gilmore candidacy but on which to base its entire complaint—headline-grabbing press reports do not result in any action that could violate the Act. And as discussed above, the Commission has consistently held that a person's own speculation about his or her future plans does not result in a candidacy.<sup>6</sup>

Contrary to these national media sources, press outlets in those early primary states where a presidential candidate would likely spend the most time accurately referred to only the potential of a Gilmore candidacy. For instance, in a compilation of statements on an Iran nuclear deal in a July 14, 2015 *New Hampshire Union Leader* article, Gilmore was referenced only as a "potential Republican candidate," in stark contrast to candidates in the article referenced merely as "Republican" or "Democrat."<sup>7</sup>

Further, Complainant points to Gilmore's appearances in New Hampshire as *prima facie* evidence of a campaign announcement. However, event hosts where Gilmore appeared, such as the Hillsborough County Republican Committee for a July 11, 2015 event, accurately identified Gilmore only as a "potential" candidate.<sup>8</sup>

ONCE GILMORE BECAME A CANDIDATE, ALL REQUIRED COMMISSION FORMS WERE TIMELY FILED

On July 17, 2015, once Gilmore had decided to become a candidate for President of the United States, he announced his candidacy during a previously scheduled radio interview. He then filed his Statement of Candidacy with the Commission on July 29, 2015, within the fifteen day window. His authorized campaign committee separately filed with the Commission on August 4, 2015.

The Commission's regulations and enforcement history clearly delineate the actions of a "candidate" for federal office from those individuals who are merely considering becoming a candidate for federal office. Using this long-standing framework, it is clear from a review of Gilmore's public statements and actions that he had not decided to become a candidate prior to July 17, 2015, nor taken any action to call himself a candidate. After becoming a candidate, Gilmore and his representatives took the necessary steps to timely inform the Commission of its decision. The complaint's incorrect assertions and speculative statements do not somehow change Gilmore's decision-making timeline into a violation of the Act.

<sup>6</sup> See *supra* note 3.

<sup>7</sup> "Presidential hopefuls react to Iran deal," *New Hampshire Union Leader*, Jul. 14, 2015, <http://www.unionleader.com/article/20150714/NEWS0605/150719610>.

<sup>8</sup> Press Release, Hillsborough County Republican Committee, Jun. 23, 2015, attached as Attachment A.

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For the reasons stated above, the Commission must find no reason to believe that Respondents have violated any provisions of the Act and close the file in this matter under review.

Respectfully submitted,



Stephen P. Roberts

Counsel for James S. Gilmore III, Gilmore for America  
LLC, and Karen Marcus in her official capacity as  
Treasurer

Attachment

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ATTACHMENT A



*Hillsborough County*  
*Republican Committee*  
New Hampshire

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**Hillsborough County Republican Committee**

For Immediate Release: June 23, 2015

Contact: Mark Vincent, Chairman, Hillsborough County Republican Committee:  
[VincentMark@comcast.net](mailto:VincentMark@comcast.net), [www.HillsboroughGOP.org](http://www.HillsboroughGOP.org) (603) 801-8851

**HILLSBOROUGH COUNTY REPUBLICAN COMMITTEE ANNOUNCES  
FORMER VIRGINIA GOVERNOR JIM GILMORE AS GUEST SPEAKER AT  
THEIR SATURDAY, JULY 11 MONTHLY MEETING**

The Hillsborough County Republican Committee has announced that the former Governor of Virginia, and former Republican National Committee Chairman Jim Gilmore, a potential presidential candidate, will be their guest speaker on Saturday, July 11 at 9:30 am at the Merrimack Town Hall, 6 Baboosic Lake Road in Merrimack.



A native Virginian, Gilmore received a Bachelor's of Arts and a Juris Doctor from the University of Virginia, and then served in the U.S. Army as a counterintelligence agent. He later was elected to public office as a county prosecutor, as the Attorney General of Virginia, and as Governor of Virginia.

During his term as governor, Gilmore chaired the Congressional Advisory Commission on Electronic Commerce. The Commission was charged with the task of making recommendations to the United States Congress on Internet taxation. The Commission's Report to Congress opposed taxation of the Internet.

From 1999 to 2003, Gilmore chaired the Congressional Advisory Panel to Assess Domestic Capabilities for Terrorism Involving Weapons of Mass Destruction, nicknamed the Gilmore Commission. From January 2001 to January 2002, Gilmore was the Chairman of the Republican National Committee

The Hillsborough County Republican Committee plans to bring many potential presidential candidates to Hillsborough County, offering voters the opportunity to hear the candidates' positions on the issues and to ask them the tough questions to help determine which candidate they're going to support in New Hampshire's First-in-the-Nation Presidential Primary scheduled for February 9, 2016.

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